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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 DAVID EVANS,

10 Plaintiff,

11 v.

12 JOHN MARTIN, et al.,

13 Defendants.
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Case No. 1:21-cv-00941-EPG

FINDINGS AND RECOMMENDATIONS
TO DISMISS THIS ACTION AS
DUPLICATIVE OF CASE NO. 1:21-cv-
00093-DAD-BAM

TWENTY-ONE (21) DAY DEADLINE

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN A DISTRICT
JUDGE TO THIS CASE

16 Plaintiff David Evans is proceeding *pro se* in this civil rights action filed pursuant to 42
17 U.S.C. § 1983. On June 8, 2021, Plaintiff filed the complaint commencing this action in the
18 Sacramento division along with a motion to proceed *in forma pauperis*. (ECF No. 1). On June
19 16, 2021, the Sacramento division transferred the case to the Fresno division, and the case was
20 assigned to the undersigned. (ECF No. 6). After reviewing the complaint, it is recommended
21 that this action be dismissed as duplicative of *Evans v. Martin*, No. 1:21-cv-00093-DAD-BAM
22 and that the motion to proceed *in forma pauperis* be denied as moot.

23 **I. LEGAL STANDARD**

24 “Plaintiffs generally have ‘no right to maintain two separate actions involving the same
25 subject matter at the same time in the same court and against the same defendant.’” *Adams v.*
26 *Cal. Dep’t of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (quoting *Walton v. Eaton Corp.*,
27 563 F.2d 66, 70 (3d Cir. 1977)), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S.
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1 880, 904 (2008).

2 “To determine whether a suit is duplicative, we borrow from the test for claim
3 preclusion.”¹ *Adams*, 487 F.3d at 688. “[T]he true test of the sufficiency of a plea of ‘other suit
4 pending’ in another forum [i]s the legal efficacy of the first suit, when finally disposed of, as
5 ‘the thing adjudged,’ regarding the matters at issue in the second suit.” *Id.* (second alteration in
6 original) (quoting *The Haytian Republic*, 154 U.S. 118, 124 (1894)). “Thus, in assessing
7 whether the second action is duplicative of the first, we examine whether the causes of action
8 and relief sought, as well as the parties . . . to the action, are the same.” *Adams*, 487 F.3d at
9 689; *see also Serlin v. Arthur Anderson & Co.*, 3 F.3d 221, 223 (7th Cir. 1993) (“[A] suit is
10 duplicative if the claims, parties, and available relief do not significantly differ between the two
11 actions.” (internal quotation marks omitted)).

12 “After weighing the equities of the case, the district court may exercise its discretion to
13 dismiss a duplicative later-filed action, to stay that action pending resolution of the previously
14 filed action, to enjoin the parties from proceeding with it, or to consolidate both actions.”
15 *Adams*, 487 F.3d at 688.

16 II. DISCUSSION

17 Plaintiff has two civil rights cases pending before this Court. On January 15, 2021,
18 Plaintiff filed a complaint in the Sacramento division, which was later transferred to the Fresno
19 division, and is proceeding as *Evans v. Martin*, Case No. 1:21-cv-00093-DAD-BAM. In that
20 case, the District Court adopted findings and recommendations, issued on May 19, 2021, to
21 dismiss certain Defendants. (*See* ECF Nos. 14, 15 - Case No. 1:21-cv-00093-DAD-BAM). The
22 second case is the instant case, No. 1:21-cv-00941-EPG, filed on June 8, 2021. (ECF No. 1).

23 In both this case and in Case No. 1:21-cv-00093-DAD-BAM, Plaintiff recounts alleged
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25 ¹ The primary difference between dismissing a case as duplicative and dismissing a case under the
26 doctrine of claim preclusion is that a final judgment need *not* have been entered to dismiss a case as
27 duplicative while claim preclusion requires a final judgment on the merits. *Cook v. C.R. England, Inc.*,
28 No. CV 12-3515-GW CWX, 2012 WL 2373258, at *3 (C.D. Cal. June 21, 2012). Although an order has
been entered in Case No. 1:21-cv-00093-DAD-BAM dismissing certain claims and defendants, no final
judgment has been entered pursuant to Federal Rule of Civil Procedure 58. Accordingly, the Court does
not apply the doctrine of claim preclusion.

1 constitutional violations beginning on January 19, 2019, while he was housed at Kern Valley
2 State Prison. Generally, both cases allege that, after Plaintiff reported feeling suicidal due to
3 information and photos being leaked on social media regarding his same-sex relations,
4 Defendants used excessive force against him, subsequently denied him medical care, and
5 forced him to endure unconstitutional conditions of confinement. In comparing the two
6 complaints, “it is clear that the two actions share a common transaction nucleus of facts.”
7 *Adams*, 487 F.3d at 689. For instance, the complaint in this case states that Plaintiff expressed
8 “suicidal ideation and safety concerns regarding his sexual orientation” after “photos [were]
9 leaked on social media.” (ECF No. 1, p. 10). And the complaint in Case No. 1:21-cv-00093-
10 DAD-BAM states that Plaintiff “was feeling suicidal” because “information and photos were
11 recently leaked on social media about (plaintiff’s) same sex relations.” (ECF No. 1, p. 11 - Case
12 No. 1:21-cv-00093-DAD-BAM).

13 And while Plaintiff sued more defendants in Case No. 1:21-cv-00093-DAD-BAM, every
14 Defendant in the instant action is a defendant that has been dismissed in Case No. 1:21-cv-
15 00093-DAD-BAM, although judgment has not yet been entered. (*See* ECF Nos. 14, 15 - Case
16 No. 1:21-cv-00093-DAD-BAM). Indeed, Plaintiff informed the Court in Case No. 1:21-cv-
17 00093-DAD-BAM that he planned to raise his dismissed claims in a new civil case in response
18 to the screening order:

19 Plaintiff does not wish to file an amended complaint and is willing to proceed on
20 the cognizable claims the court found. Plaintiff joined defendants in his complaint
21 because it all arised from the same [occurrence] totality of conditions with a
22 nexus to each other. Plaintiff is informing the court that he will be filing another
complaint holding the other defendant[s] accountable in hopes that Plaintiff
receives the justice he deserves.

(ECF No 12, p. 1 - Case No. 1:21-cv-00093-DAD-BAM); (*see also* ECF No. 11, p. 23 - Case
No. 1:21-cv-00093-DAD-BAM). Less than a month after filing this statement, Plaintiff filed
the instant action, which amounts to an improper attempt to reinstate Plaintiff’s dismissed
claims against the Defendants in this case.²

² The screening order in Case No. 1:21-cv-00093-DAD-BAM noted that Plaintiff improperly brought
unrelated claims, in violation of Federal Rules of Civil Procedure 18 and 20, for events rising from
Lancaster. However, the Lancaster claims were against two defendants King and Lugos, who are *not*

1 Based on the foregoing, the Court finds the instant case to be duplicative of Case No.
2 1:21-cv-00093-DAD-BAM. Therefore, this case should be dismissed.

3 **III. CONCLUSION AND RECOMMENDATIONS**

4 Accordingly, the Clerk of Court is HEREBY DIRECTED to randomly assign a District
5 Judge to this action.

6 Furthermore, it is HEREBY RECOMMENDED that:

- 7 1. This action be dismissed as duplicative of *Evans v. Martin*, Case No. 1:21-cv-
8 00093-DAD-BAM;
- 9 2. Plaintiff's motion to proceed *in forma pauperis* (ECF No. 2) in this case be denied
10 as moot; and
- 11 3. The Clerk of Court be directed to close the case.

12 These findings and recommendations are submitted to the assigned United States
13 District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B). Within twenty-
14 one (21) days after service of the findings and recommendations, Plaintiff may file written
15 objections with the Court. Such a document should be captioned "Objections to Magistrate
16 Judge's Findings and Recommendation." The assigned United States District Court Judge will
17 then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636(b)(1)(C). Plaintiff is
18 advised that failure to file objections within the specified time may waive the right to appeal the
19 District Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter*
20 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21 IT IS SO ORDERED.

22 Dated: **July 13, 2021**

23 /s/ Eric P. Grogg
UNITED STATES MAGISTRATE JUDGE

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28 defendants in this case. Plaintiff's claims in this case arise out of Kern Valley State prison, which are at
issue in the other pending case.